

# TTAB

Our File No.: 08011.M001

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EXXON MOBIL CORPORATION

Opposer,

v.

CADENA COMERCIAL OXXO, S.A. DE C.V.

Applicant.

78/601192  
) Opposition No.: 91172350

### ANSWER TO NOTICE OF OPPOSITION

Applicant, by and through its undersigned attorneys, answer the Notice of Opposition as follows:

1. In response to the Preamble of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein relating to Opposer, thus denying same. Applicant denies that Opposer would be damaged by registration of the mark for which it seeks registration.

2. In response to Paragraph 1 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

3. In response to Paragraph 2 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.



4. In response to Paragraph 3 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

5. In response to Paragraph 4 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

6. In response to Paragraph 5 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

7. In response to Paragraph 6 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

8. In response to Paragraph 7 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

9. In response to Paragraph 8 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

10. In response to Paragraph 9 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same. It is admitted that print-outs from the Trademark

Electronic Service System (TESS) were attached to the Notice of Opposition but no certified title and status copies of registrations were provided.

11. In response to Paragraph 10 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

12. In response to Paragraph 11 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

13. In response to Paragraph 12 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein, thus denying same.

14. In response to Paragraph 13 of the Notice of Opposition, Applicant admits allegations contained therein.

15. In response to Paragraph 14 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein regarding ExxonMobil's alleged priority, use, and/or registration of the alleged EXXON Marks in the United States, and accordingly, whether Applicant would be able to establish a date which would be prior to such uncertain dates, whether through international treaties or otherwise, thus denying same. Applicant admits that it filed an intent-to-use application.

16. In response to Paragraph 15 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein relating to the alleged fame of Opposer's alleged EXXON Marks and attendant issues as to when such marks acquired such fame (if any), thus denying same.

17. In response to Paragraph 16 of the Notice of Opposition, Applicant states that it has not yet used the mark OXXO in the United States but is still contemplating the legal conclusion as to whether other use otherwise qualifies as "United States commerce."

18. In response to Paragraph 17 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein relating to the alleged goods and services ExxonMobil offers under the alleged EXXON Marks, thus denying comparisons and "relationships" thereto. Applicant admits that it intends to open OXXO branded convenience stores. Based upon information and belief, Opposer's "store services" (if any) may only be in supplemental to gasoline service stations, possibly branded under other trademarks, and Applicant does not intend to open OXXO branded gasoline service stations (with or without supplemental "store services"), thus denying allegations relating to Applicant's services being "directly competitive" with even the alleged services of Opposer.

19. In response to Paragraph 18 of the Notice of Opposition, Applicant admits that it does present its mark in a design as shown on Exhibit B but states that it is without sufficient information or knowledge to form a belief about the truthfulness of remaining allegations contained therein relating to Opposer's alleged rights or registrations, thus denying same.

Applicant denies that such presentation of the mark is “similar to ExxonMobil’s IXD” and further denies confusing similarity, if implied.

20. In response to Paragraph 19 of the Notice of Opposition, Applicant admits that it has not received explicit permission or approval from Opposer to use or register the mark OXXO for the identified goods/services in the United States.

21. In response to Paragraph 20 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein relating to Opposer’s alleged EXXON Marks or services necessary to make the attendant comparisons, thus denying same. Applicant denies that confusion, mistake or deception will occur by the registration of its mark, and further Applicant denies that registration should be refused.


22. In response to Paragraph 21 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein relating to the alleged “distinctive quality” of Opposer’s alleged EXXON Marks, individually or collectively, sufficient to make the attendant judgment, thus denying same. Applicant denies that its mark would damage Opposer or its alleged EXXON Marks, and further Applicant denies that registration should be refused.

23. In response to Paragraph 22 of the Notice of Opposition, Applicant states that it is without sufficient information or knowledge to form a belief about the truthfulness of allegations contained therein relating to Opposer’s alleged “rights” necessary to make the attendant judgment of “consistency” or “inconsistency”, thus denying same. Applicant denies that damage will occur to Opposer by the registration of its mark.

WHEREFORE, Applicant respectfully requests the Opposition be dismissed and that its mark proceed toward registration.

Respectfully submitted,  
CADENA COMERCIAL OXXO, S.A. DE C.V.

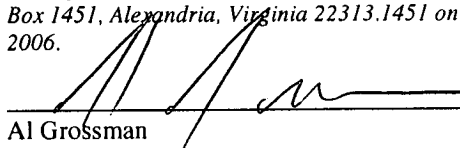
Dated: 9/21 2006

  
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Lori N. Boatright  
Attorney for Applicant

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**CERTIFICATE OF MAILING:**

*I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313.1451 on September 21, 2006.*

  
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Al Grossman

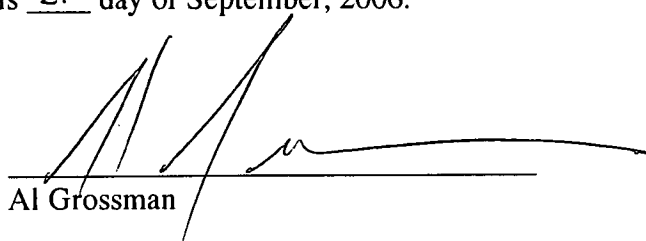
9/21/06  
Date

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was served on the attorney for Opposer, at the stated address:

Louis T. Pirkey, Esq.  
William G. Barber  
Stephen P. Meleen  
PIRKEY BARBER LLP  
600 Congress Avenue, Suite 2120  
Austin, TX 78701

by first class mail, postage prepaid on this 21<sup>st</sup> day of September, 2006.

  
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Al Grossman